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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1971

No. A-53

RONALD HENDERSON,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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TABLE OF CONTENTS

	PAGE
Opinion Below	1
Jurisdiction	2
Question Presented	2
Statement of the Case	2
The Government's Case	3
The Defense	11
Point I—There was insufficient proof to establish a conspiracy	14
Point II—Absent proof of a conspiracy the acts and declarations of James Hines were inadmissible in evidence, and the substantive count must be reversed	21
Conclusion	21

CITATIONS

Bell v. United States, 2 F. 2d 543 (8th Cir. 19)	16
Blumenthal v. United States, 332 U.S. 539 (1946)	17
Burkhardt v. United States, 13 F. 2d 841 (6th Cir. 19)	16
Dickenson v. United States, 18 F. 2d 887 (8th Cir. 19)	16
Dodson v. United States, 215 F. 2d 196 (6th Cir. 1954)	20
Fisher v. United States, 266 F. 667 (4th Cir. 1920)	14

PAGE

Hansen v. Huff, 291 U.S. 559 (1964) 14

Johnson v. United States, 215 F. 679 (7th Cir. 1917) 15

Kotteakos v. United States, 328 U.S. 750 (1946) 17

Linde v. United States, 12 F. 2d 59 (8th Cir. 1926) 16

Mortenson v. United States, 322 U.S. 369 20

Stubbs v. United States, 349 F. 571 (9th Cir. 19) 16

Thorn v. United States, 278 F. 932 (8th Cir. 1922) 19

United States v. Borelli, 336 F. 2d 376 (2d Cir. 1964) 18
United States v. Falcone, 109 F. 2d 579 (2d Cir. 1940) 18, 20
United States v. Heitler, 274 F. 401 (D.C. Cir. 1921) 16
United States v. Koch, 113 F. 2d 982 (2d Cir. 1940) 16
United States v. Pape, 144 F. 2d 778 (2d Cir. 1944) 14
United States v. Ross, 257 F. 2d 292 (2d Cir. 1958) 20
United States v. Vacelli, 407 F. 2d 735 (7th Cir. 1969) 16
United States v. Webb, 359 F. 2d 558 (6th Cir. 1966) 18

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The petitioner Ronald Henderson respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered in this proceeding on June 11, 1971.

Opinion Below

No opinion was rendered by the United States Court of Appeals for the Second Circuit. The opinion of the United States District Court for the Southern District of New York, delivered in rendering the verdict in this case, is contained in the appendix on appeal.

Jurisdiction

The judgment of the Court of Appeals for the Second Circuit was entered on June 11, 1971. A timely application for an extension of time in which to file the petition for certiorari was made on July 9, 1971 and this petition for certiorari was filed within 30 days of that date.

This Court's jurisdiction is invoked under 28 U.S.C. Section 1254 (1).

Question Presented

Whether sufficient proof of a conspiracy was presented under the decisions of the Court in *Kotteakos* v. *United States,* 328 U.S. 750 and *Blumenthal* v. *United States,* 332 U.S. 539, and has the conspiracy concept been unduly extended beyond reasonable bounds so as to become a prosecutorial tool.

Statement of the Case

The petitioner, Ronald Henderson, was convicted in the United States District Court for the Southern District of New York (Weinfeld, J.) on July 14, 1970 of knowingly transporting in interstate commerce, a woman for the purpose of prostitution and debauchery (Title 18, U.S.C. §2421) and of a conspiracy to violate the so called Mann Act (Title 18, U.S.C. §371). He was sentenced to concurrent terms of two years. The conviction was affirmed without opinion by the United States Court of Appeals for the Second Circuit on June 11, 1971.

Petitioner is presently in prison.

The Government's Case

Joyce Tiedens, 17-year-old on June 29, 1969, was unmarried, but pregnant, and resided in Minneapolis, Minnesota with her mother, five brothers and sisters (R. 12-14).

Christie Lee Saf, 17½ years old on June 29, 1969, a waitress, lived with foster parents in St. Paul, Minnesota. The two girls were close friends, having shared two years together at the Good Shepard, a home for problem girls (Tiedens, R. 59; Saf, R. 178-9).

On June 29, 1969, Joyce and Christie were at a party celebrating Joyce's 17th birthday. They left the party with boy friends who left them at a bus stop on Hennapin Avenue in Minneapolis. It was early evening, and both girls, having imbibed wine, were somewhat "high" (Tiedens, R. 14, 43, 45-6; Saf, R. 139-40, 170). While waiting, the girls began conversing with a man named Charles, who was soon joined by two other men, James* and Ronald. Ronald is the defendant, Henderson. They exchanged introductions, and after innocuous conversation, the three men invited the two girls to accompany them back to their motel, the Holiday Inn, for drinks or coffee. The girls accepted, and the five took a taxicab to the hotel (Tiedens, R. 14-16; Saf, R. 140, 144, 172).

The group went to Charles' room, had coffee, and talked. Charles asked Joyce if she wanted to go to New York, and she said no (Tiedens, R. 17). She did say that she wanted to leave Minneapolis, and the group talked about New York

* James was indicted as a codefendant under the name B. Bernard a/k/a James Hines etc., but his case was severed before trial (R. 2).

and "how big New York was *and how different* it was" (Tiedens, R. 63, 74; Saf, R. 141-2). Christie asked "right out" whether the men were pimps, and one of the men, it was not remembered which one, answered yes. Christie told them that she "didn't like their occupations. I didn't think it was a very good job" (Tiedens, R. 18, 76; Saf, R. 141, 175). When Charles noticed that Joyce was paying more attention to the appellant than to him, he became angry, and the two girls, James and Henderson then retired to the appellant's room (Tiedens, R. 17-18). There they talked and Joyce admired a diamond ring and watch that the appellant was wearing, and also looked through his wallet, noticing about $4,000.00 (Tiedens, R. 19).

James and Christie then went to James' room. Christie told him that she had been in the Good Shepard home for truancy and incorrigibility, and that her mother was an alcoholic. They also talked about New York, James mentioning that if Christie wanted to go there, she could go with him. However, he did not ask her to go. No one asked her to go to New York (Saf, R. 145-6, 178-181, 211).

Joyce, meanwhile, remained in the appellant's room where they talked for a while, then had sexual intercourse (Tiedens, R. 20).

When Christie and James returned, the two girls left the hotel, the men giving them cab fare. Ronald and James also gave the girls their phone numbers in New York, suggesting they could call if they ever were in New York (Saf, R. 144-6, 184, 210). Henderson asked Joyce if she wanted to go to New York, and although she said "yes," she "wasn't planning to." Christie said no—(Tiedens,

R. 20). Leaving the hotel, the girls spent the night together in a house which Joyce's mother had just vacated (Tiedens, R. 20; Saf, R. 146).

The next day the girls went to the house which Joyce's mother was not occupying. Joyce's father, though divorced, was there to visit the children, and Joyce and her father had an argument. The father complained that he didn't like the fact that Joyce, who often "hung out" in black areas (Tiedens, R. 75-6), had black boyfriends. The father threatened to have her boy friend put in jail, and threatened to hit the girl with the hammer or wrench he was then brandishing. Her father had previously beaten her on occasion, and at the time of trial was in jail for assaulting Joyce's mother and for alcoholism (Tiedens, R. 80, 87, 98, 134-6; Saf, R. 146-7, 186-7). Joyce was "mad," and she was crying, and "hated my father." She "wanted to leave Minneapolis." She didn't care where she went as long as it was out of Minneapolis, and decided "as long as I got the invitation, I was going to see if I could go the New York" (Tiedens, R. 21, 87, 98; Saf, R. 190). Joyce and Christie left the house, Joyce telling her mother she was leaving and going to Spokane, Washington, and her mother "told me to be back in about an hour" (Tiedens, R. 92).

Joyce took with her only a cosmetic kit, and no change of clothes (Tiedens, R. 88-9). Since she had been trained as a clerk-typist, she hoped to get an office job in New York. In fact she had obtained a job in Minneapolis as a clerk-typist through an agency, The American Girl, and planned to go to the agency's office in New York (Tiedens, R. 90-3, 127-8). She thought Christie was going to New York with

her, because Christie didn't want Joyce to go by herself, but Christie decided to go because "I was sick of everything" (R. 96; Saf, R. 147, 188). Joyce did not believe that if she went with the appellant, he would turn her into a prostitute, and that was not the reason she went (Tiedens, R. 99-100).

The girls then returned to the Holiday Inn, and went to Henderson's room, asking him to take them to New York. The appellant "looked surprised because we had come back," but after Joyce told him about her family problems, he offered to take care of them. James came in and they decided to leave that day (Tiedens, R. 21-2, 93, 99; Saf, R. 147). Joyce had with her $1, and Christie less than $10, but Henderson said he would help Joyce get a job as a typist in New York, and that they should not worry about money since he would help them (Tiedens, R. 22-3, 93, 98; Saf, R. 198).

The four took a taxi to the airport, talking along the way about what a big city New York was, and Henderson gave Joyce $70.00 for a plane ticket, while James gave $60.00 to Christie, who also used part of her own money for the fare. Since the girls said they were worried about being traced by their parents, Henderson suggested they change their names and ages, and Joyce assumed the name of a girl friend and assigned another girl friend's name to Christie. Joyce also changed her age to 19 (Tiedens, 23-4; Saf, R. 148-9, 192). They then boarded the plane, the two men sitting in first class, and the two girls in coach (Tiedens, R. 24; Saf, R. 151). During the flight, James joined Christie in the rear, while Joyce went up to talk to Henderson in first class. Joyce asked Henderson whether

she could go home or call her father, but Roland told her that she could not do either until she was twenty-two (Tiedens, R. 105). James told Christie that she would not like New York or what she was doing at first, but he would find her a place to stay and a job (Saf, R. 151).

When the plane stopped in Chicago, for a lengthy layover, the four went to the apartment of a relative of Henderson's. There, after Henderson and James left for a while, Christie asked to use the telephone to call her foster parents. The person in the apartment, however, refused, but added that she could telegraph, and suggested she wait until she reached New York (Tiedens, R. 25-6; Saf, R. 152-3).

Reboarding the plane for the flight to New York, the couples had further conversations. Henderson asked Joyce whether she would "do anything for him," like being a bank robber or a prostitute or a belly dancer or whatever." Joyce said no (Tiedens, R. 26, 133-4).

Arriving in New York, the four took a cab to the apartment of a girl named Connie, where Henderson and Joyce went upstairs, while James and Christie took a cab elsewhere. This was the last time the two girls were together (Tiedens, R. 27).

In the apartment, Henderson woke up Connie and asked her where "the thing was," and she replied "behind the picture." Henderson lifted up the picture on the wall, and money fell down (Tiedens, R. 28). Fifteen or twenty minutes later, Henderson and Joyce left and went to the apartment of a girl named Dee Dee. Dee Dee was also asleep,

and Henderson woke her up and introduced her to Joyce. Dee Dee "was very nice to me" and offered to answer any questions Joyce might have. Henderson came out of Dee Dee's room with "a lot of money" (Tiedens, R. 28, 114). Dee Dee asked the appellant whether Joyce was "to go to work tonight," and Henderson replied, "I don't know yet" (Tiedens, R. 29). Joyce thought that they were talking about prostitution (R. 136-7). The appellant and Joyce then left and went to the Village where Henderson bought Joyce clothes "because I didn't have any other clothes" (Tiedens, R. 29-31, 123). They returned to Connie's apartment and then went to the Markwell Hotel where the appellant registered for a room in his name. There they made love, and the appellant offered to buy Joyce birth control pills, new shoes and wigs. The appellant then left, and Joyce went to sleep (Tiedens, R. 31-33, 123-4).

When Christie and James left Joyce and Ronald, they went to the apartment of a girl who introduced herself as Linda from Memphis. Linda told Christie that she liked New York and what she was doing, and added that Christie probably would not like it at first. Linda did not discuss what she was doing, but Christie "just guessed" it was prostitution, although no one had said anything about prostitution to her or Joyce, or that she was coming to New York to be a prostitute (Saf, R. 154-5, 203-4). Soon Linda left to go to the hairdresser and James went to the laundry. When he returned, he said that he could tell that Christie was scared, and she replied that she wanted to go back, she didn't like it. James grabbed her and said she was staying, he wasn't going to let her go, and she would get used to the city. He said he could take care of her,

and added that Christie would not have to have sexual intercourse with anyone but him if she did not want to. James also said he would buy her clothes, since she didn't have any, and would find her a place to stay (Saf, R. 155-6).

The couples left and James bought her clothes and then they returned to the apartment and arranged for a room at the Woodstock Hotel. James stayed in the apartment and gave Christie his phone number, while Linda, who had also returned, was asked to take Christie to the hotel (Saf, R. 156-60). James told Linda to tell Christie what to do so she would not "get picked up right away." In the cab to the hotel Linda told Christie how to tell the difference between a customer and a policeman. If the man approached the girl, he was probably a policeman. So Christie was advised to approach the man. Linda also told her that since she was white, she should not accept anything under $25.00, and the further the customer wanted to go, the more money she should try to get. If they went to a hotel, Christie and the customer should register separately and then go upstairs. Linda also gave Christie names of hotels she could use, the Woodstock Hotel being on the list—(Saf, R. 160-1).

Arriving at the hotel, Christie paid with money that James had given her, and went to her room alone. Since Christie had decided that New York "might not be too bad of a place to visit, but I'd never stay," she telephoned her foster parents. She, then, called the police who came and took her to the police station. There she telephoned Henderson in the presence of FBI agent McShane and found out where Joyce was (Saf, R. 162-4, 206).

During her conversations with James, he had never discussed the appellant with her, nor was Christie told or was it indicated to her that James and Henderson were working together (R. 204).

James T. McShane, a special agent in the FBI, testified that on July 1, 1969 he received a call from the New York police and went to a precinct where he met and talked with Christie Saf. The girl made a phone call, and McShane went to the Markwell Hotel on West 45th Street (R. 215-18). He noted that room 809 was registered to Ronald Henderson, and went to the room and spoke with Joyce Tiedens (R. 218). During the conversation, Henderson began to enter the room, then slammed the door and ran down the stairs. He was apprehended by a city detective who had accompanied McShane to the hotel (R. 219).

At the police precinct, McShane warned Henderson of his rights, and questioned him. The appellant told the agent that he was the son of Mr. and Mrs. Henderson of St. Louis, but was living in New York. Henderson stated that he had been in Minneapolis with friends, Bernard and Charles Morris. He said that while on the street they had met two girls who were drunk, and who told them that they obtained money by rolling drunks. When they heard that the men were from New York, they said they wanted to go there. Henderson said that he told the girls he would find them a hotel in New York if they came. However, there was no mention of prostitution. The appellant admitted having sexual intercourse with Joyce Tiedens in Minneapolis and New York City. He also said that Joyce had her own money (R. 221-5).

The Defense

Ronald Henderson, the defendant, testified that he is 26 years old and was convicted of petit larceny, forgery and receiving stolen goods in 1965-6 (R. 235-6).

On June 29, 1969, he was in Minneapolis on a trip "to get out of the city for a while" since it was very hot in New York that summer (R. 254). He made the trip with Charles Morris and James Hines, Hines being a friend from shooting pool together (R. 236, 259). They planned to stay in Minneapolis for three or four days, and resided there at the Holiday Inn (R. 236).

Henderson and his friends met Joyce Tiedens and Christie Lee Saf on the street. The girls were drunk and said they were celebrating Joyce's nineteenth birthday. The girls agreed to accompany the men to their hotel and went with Charles and James to Charles' room, Henderson going to his room alone (R. 237, 239). After a while, the two girls and James came to Henderson's room. When they entered, the girls asked him if he was a pimp, too, and he replied, "No, I'm a man." (R. 237, 252). The defendant talked to Joyce who told him about her trouble with her father and her background (R. 240-1). They had sexual intercourse (R. 241). Though Joyce said she was going to leave home, mentioning in particular Colorado, the defendant did not suggest bringing her to New York, though he offered to help her (R. 241-2). When Christie came back into the room she said she wanted to go to New York, but had not done so because she did not want to break up with Joyce, her close friend (R. 242). Hender-

son gave Joyce his telephone number and mentioned that the employment agency, The American Girl, which Joyce had used in Minneapolis to find a job, also had an office in New York (R. 242-3). The girls then left, and the defendant did not expect them to come back (R. 243-4).

The next day, however, the girls returned, Joyce announcing "we're going to New York." Henderson was surprised, and replied, "good, if that's what you want to do" (R. 244-5). Joyce said she did not have any money and asked for help, explaining that she was leaving to get away from her father (R. 245). The defendant gave her some money (R. 245). Joyce also mentioned that she hoped her parents would not "find out," and Henderson suggested she could just change her name on the airline ticket, and Joyce agreed (R. 235-6).

On the airplane they talked about planes, since Joyce had never been on one before. The defendant never asked her if she would be a bank robber, prostitute or belly dancer for him—(R. 246-7).

In New York, Henderson took Joyce to the house of a friend, Connie, and then went to get a room. Since the room at the Markwell Hotel wouldn't be ready for a while, he took Joyce to the Village to buy her clothes because she didn't have a change of clothes with her (R. 248-9). They then went to the hotel where Henderson registered in his own name since he was paying (R. 249). Then they made love. He told Joyce he would buy her birth control pills because she expressed a fear of pregnancy (R. 249, 253). He then left.

When he returned three hours later, he saw a man in Joyce's room, and when someone yelled "there he is," Henderson ran because he was "leery" and didn't know what was happening (R. 250-1). Taken to the police station, he was told he was held for rape and assault on a 15 year old girl. Henderson asked for a lawyer, and was told he could have one "after a while" (R. 250-1).

In the past, the defendant has used various aliases, including Anthony Strong, and Ronald Ingram. The alias he uses most frequently, however, is Ronald Henderson. His real name is Ronnie Farr Vaughn (R. 257-8). He stated that he ghost writes lyrics for a singer and writer named Isaac Hayes who works for Stax Recording in Memphis. Hayes also owns the apartment in New York which the appellant inhabits (R. 262-8). The money in the apartment of Connie, whose last name is Henderson, was money the defendant left there before his trip. It was $200.00 and he got it for writing lyrics. Connie is a girl friend, as is Dee Dee Ingram. He did not get money from Dee Dee (R. 268-71).

The defendant swore that he never told or indicated to the girls that he expected them to become prostitutes, and never instructed them about it (R. 252-3). The purpose of bringing Joyce to New York was "to help her" as she requested, and he was not in Minneapolis to procure women for prostitution in New York (R. 253).

Ronald Henderson, a lance corporal in the Marines, testified that he is the son of Claude Henderson of East St. Louis, and never saw the defendant before (R. 280-1).

POINT I

There was insufficient proof to establish a conspiracy.

The Petitioner, though indicted with another, was tried alone, and convicted of transporting women across interstate lines with intent to lure them into prostitution, and conspiracy to commit that crime. He was found not guilty of enticing the women into interstate commerce with the same purpose. The evidence directly implicating Henderson alone was meager. He did not entice the girls to come to New York. The decision to accompany him and James Hines was made by the girls for personal reasons because of family problems, and they left Minneapolis with no intent to engage in prostitution. Upon arriving in New York, Joyce Tiedens, the girl with the petitioner, was introduced to two of Henderson's girl friends, had clothes bought for her, and was lodged in a hotel. She did have sexual intercourse with Henderson, as she had in Minneapolis, but since this was clearly not the purpose of the journey, the statute was not thereby violated. For where solely intercourse is involved, the transportation must have this for its object or be the means of effecting it. A trip for another purpose, even though sexual intercourse be contemplated, removes the act from the statutory prohibition [*Hansen* v. *Huff*, 291 U.S. 559, 563 (1934); *Fisher* v. *United States*, 266 F 667 (4th Cir. 1920); *United States* v. *Pape*, 144 F2d 778 (2d Cir. 1944)]. Here, of course, the petitioner's purpose was to return home, while the girl wanted to come to New York to get away from her parents and find a job.

The only mention of prostitution between the petitioner and his girl occurred on the airplane trip to New York, where the defendant asked Joyce whether she would be willing to do anything for him, mentioning as examples, bank robbery, prostitution or belly dancing. Obviously, this casual remark can hardly be convincing proof of an intent to entice the girl into prostitution. Other events may have been suggestive or suspicious, but that is insufficient to convict. For instance, in *Johnson* v. *United States*, 215 F. 679 (7th Cir. 1917), a girl in financial straits telephoned the defendant from Pittsburgh, and was wired $75.00 and instructions to meet the defendant in Chicago. The girl was a prostitute, and the defendant had met her in a brothel and had previously taken her along his journeys throughout the country. After her arrival in Chicago the defendant gave her money which she used to open up a brothel there. The Circuit Court held that the evidence was insufficient to allow conviction for transporting the girl across state lines for purposes of prostitution. Certainly, the evidence in the present case is far less convincing.

The government, however sought to overcome the deficiency in proof by charging a conspiracy, and introducing at Henderson's trial evidence relating to the intent of his companion, James Hines. For it is evident that Hines had prostitution in mind for Christie Lee Saf, as the instructions given by the girl Linda to Christie made clear. Thus, the evidence of Hines' intent is the core of the government's case against Henderson, not only as proof of Henderson's intent on the substantive count, but also as proof that Henderson had entered into a conspiracy to transport girls into prostitution.

However, even if Henderson was engaged in the same substantive offense as Hines, proof that they were doing the same thing is not proof of a conspiracy. For proof that two people commit similar substantive crimes does not prove that they did it by agreement. In *Linde* v. *United States,* 13 F.2d 59 (8th Cir. 1926) there was a conspiracy to transport stolen automobiles across interstate lines. Two of the defendants who received the stolen cars were found not guilty of conspiracy, the court writing:

> "That they may have had guilty knowledge and participation rests upon suspicion only, arising from their acquaintance and association with some or all of the other conspirators; but to establish a conspiracy to violate a criminal statute the evidence must convince that the defendants did something other than participate in the substantive offense which is the object of the conspiracy. There must, in addition thereto, be proof of the unlawful agreement."

to the same effect, *United States* v. *Heitler,* 274 F. 401 (D.C. Cir. 1921); *Stubbs* v. *United States,* 249 F. 571 (9th Cir. 19); *Bell* v. *United States,* 2 F. 2d 543 (8th Cir. 19); *Dickenson* v. *United States,* 18 F. 2d 887 (8th Cir. 19); *Burkhardt* v. *United States,* 13 F. 2d 841 (6th Cir. 19); *United States* v. *Koch,* 113 F. 2d Cir. 1940). Similar objectives, thus, do not prove conspiracy. In *United States* v. *Vacelli,* 407 F2d 735 (7th Cir. 1969) some of the conspirators who agreed to hijack silverware also hijacked polaroid equipment. The court decided that "the fact that the object in both the polaroid hijacking and the silver hijacking were similar is insufficient to constitute an overall common conspiracy: (*id.* at 744). In the same way as two conspiracies, including in them common members of both, can operate individually, individuals can operate with the same

object without forming a conspiracy to do so. Thus, in *Kotteakos* v. *United States,* 328 U.S. 750 (1946) the Supreme Court found individual enterprises existing where many people and groups of people each intended to obtain FHA loans on false applications, all the defendants using the same broker to prepare the loan applications. In amplifying the *Kotteakos* holding in *Blumenthal* v. *United States* [332 U.S. 539 (1946)] the Supreme Court stated:

> "No two of those agreements were tied together as stages in the larger all-inclusive combination, all directed to achieving a single unlawful end or result. On the contrary each separate agreement had its own distinct illegal end. Each loan was an end in itself, separate from all others although all were alike in having similar illegal objects. Except for Brown, the common figure, no conspirator was interested in whether any loan except his own went through. And none aided in any way by agreement or otherwise in procuring another's loan. The conspiracies therefore were distinct and disconnected, not parts of a larger general scheme, both in the phase of the agreement with Brown and also in the absence of any aid given to others as well as in specific object and result. There was no drawing of all together in a single over-all comprehensive plan."

The holding of *Kotteakos* is thus directly applicable to the present case. There was no showing that Henderson and Hines were other than two individual entrepreneurs, each separately engaged in the same enterprise. Neither appeared interested in whether the other was successful or not. Each paid separately for his own girl. Each paired off with one of the girls alone in the hotel room. Each escorted a single girl. Moreover, when they arrived in

New York, they immediately separated. Hines introduced his girl to his own girl friend, Henderson introduced Joyce to his own girls. There was no aid or agreement of Hines in procuring Christie for Hines. Thus, there was no evidence that each did what a conspirator must do, as Learned Hand wrote. He "must in some sense promote their venture himself, make it his own, have a stake in its outcome" [*United States* v. *Falcone,* 109 F 2d 579, 581 (2d Cir. 1940)]. It is apparent here that Henderson had no stake in Hines success or failure with Christie, nor did Hines have any stake or concern in Henderson's venture. Consequently, Henderson and Hines acted as individual entrepreneurs, the proof failing to show that their actions were more than distint and separate crimes with the same object. In other words, it failed to show a combination or agreement as the essential element of a conspiracy [*United States* v. *Borelli,* 336 F. 2d 376 (2d Cir. 1964)]. And to convict this element must be shown beyond a reasonable doubt [*United States* v. *Webb,* 359 F. 2d 558 (6th Cir. 1966)].

Moreover, on a factual plane, the actions of Hines with Christie were not entirely the same as Henderson with Joyce. Certainly, there was some duplication. Each purchased clothes for his girl and found her a hotel room. But this is explainable by the circumstance that neither girl had brought clothes with her, nor had they a place to stay. Importantly, however, there is a crucial difference in the acts of each, for Hines, in introducing Christie to Linda, had her instructed on the elements of prostitution before she took up residence at the hotel. Indeed, it is quite likely that Christie called her parents and the police because she knew what Hines had in mind. However,

though Henderson introduced Joyce to two girl friends, significantly none of these proported prostitutes ever instructed Joyce about prostitution nor did Henderson ever ask them to, in complete contrast to Hines. It thus may well be asked why, if Henderson and Hines had agreed to lead the girls into prostitution, did the petitioner not attempt to do so in the same manner as Hines did. For certainly, he had the same opportunity, having introduced Joyce to two girl friends in their time in New York. One answer, of course, is that Henderson did not intend to make Joyce into a prostitute, but rather decided to keep her as a girl friend, a non-criminal act [*Thorn* v. *United States*, 278 F. 932 (8th Cir. 1922)]. Consequently, the parallelism between the actions of Hines and Henderson parted at the crucial point—the introduction of the girl into prostitution. And the failure of the appellant to make a move to do so, though presented with the opportunity, casts grave doubt on whether he ever intended to lead Joyce into prostitution, as well as on the fact that he entered into a conspiracy with Hines to become a white slaver.

Indeed, the whole transaction in finding and bringing the girls to New York was much too casual and coincidental to support the conclusion that this was done as part of a preconceived plan by the petitioner. Meeting the girls was no more than a simple "pick up," and even after having made love to Joyce in his hotel room, the petitioner could not have expected her to leave with him the next day. Indeed, the intervening factor of Joyce's argument with her father, the true stimulus for the trip, could not have been foreseen or even contemplated by the petitioner. Even the girls testified that their return to the hotel and decision to go to New York was fortuitous and a total sur-

prise to the petitioner. Yet Henderson was apparently ready to leave for New York, regardless of whether the girls came back. Thus, the encounter with the girls in Minneapolis was apparently without plan or design. It was done in a wholly non-conspiratorial fashion. Prostitution was never mentioned there, and the girls intended to go to New York for other reasons.

A part of the government's case is innuendo drawn from the supposition that Henderson was, by profession, a pimp. Yet even if Henderson had some association with prostitutes in New York, that does not make every encounter of his with a girl part of a plot to lead her into prostitution. Indeed, it may be compared with a trip taken out of the state by a prostitute, and a gentleman friend, where such a trip and the return across state lines to her professional activity does not create a violation of the statute [*Mortenson* v. *United States,* 322 U.S. 369; *United States* v. *Ross,* 257 F 2d 292 (2d Cir. 1958)].

In sum, the government's proof of conspiracy rests simply upon an association of Henderson with Hines, a person who intended to lead his girl into prostitution. But as the court wrote in *Dodson* v. *United States,* 215 F 2d 196, 199 (6th Cir. 1954), quoting from Learned Hand's observations in *United States* v. *Falcone,* 109 F. 2d 579, 591 (2d Cir. 1940), "the opportunities for oppression that exist when prosecutors seek to 'sweep within the drag-net of conspiracy all those who have been associated in any degree whatever with the main offender, have long been recognized." This case in no way dilutes that recognition.

POINT II

Absent proof of a conspiracy the acts and declarations of James Hines were inadmissible in evidence, and the substantive count must be reversed.

The acts and declarations of James Hines, and his associate Linda were admissible against Henderson only because a conspiracy was charged. Since the evidence failed to sustain the conspiracy, the testimony relating to James Hines' activities with Christie Lee Saff were inadmissible, and Henderson is entitled to a reversal of his conviction on the substantive count on two grounds. First, without the evidence of Hines' activities, there is insufficient proof of Henderson's intent, and the substantive count in the indictment must be dismissed. Second, since this illegal and highly prejudicial evidence was considered by the Court in rendering its verdict (R. 294), Henderson is at least entitled to a new trial where this evidence is not displayed before the fact finder. The conspiracy accusation is a valued tool whose application appears to extend beyond the bounds of reason.

Conclusion

The petition for a writ of certiorari granted.

Respectfully submitted,

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